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JUN 29 2007
OFFICE OF PETITIONS

In re Application of	:	
Samaras et al.	:	
Application No.: 09/980287	:	DECISION ON
Filing or 371(c) Date: 07/18/2002	:	PETITION
Title of Invention: TIME-SLOT	:	
PARTITIONING IN A TDMA SYSTEM	:	

This is a decision in response to the Petition To Withdraw Holding of Abandonment, filed April 13, 2007, The correspondence is properly treated under 37 CFR 1.181.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed March 28, 2006. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a).

Applicant filed a reply in the form of an Amendment within two (2) months of the mail date of the Office action, on May 22, 2006 (Certificate of Mailing dated May 19, 2006); however, the Amendment failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action mailed May 31, 2007.

No complete and proper reply having been received, the application became abandoned on June 29, 2006. A Notice of Abandonment was mailed March 30, 2007.

Petition under 37 CFR 1.181

Applicant files the instant petition requesting withdrawal of the holding of abandonment because the Advisory Action was not received. In support of this assertion, Applicant files a copy of the docket record for the above-identified application.

Applicable Law, Rules and MPEP

37 CFR 1.135, Abandonment for failure to reply within time period, provides that

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment. (Emphasis supplied).

MPEP 711.03(c)

The MPEP 711.03(c)(I)(A), Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action, explains that

[e]vidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); Krahn v. Commissioner, 15 USPQ2d 1823, 1824 (E.D. Va. 1990); In re Application of Fischer, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

Analysis and conclusion

In this instance, Applicant filed a reply to the final Office action; however, the reply failed to place the application in condition for allowance. The application became abandoned for failure to file “such complete and proper reply as the condition of the application may require.” The failure to receive the advisory action does not warrant withdrawal of the holding of abandonment.

Alternative venue

Applicant is urged to file a petition stating that the delay was unintentional. An “unintentional” petition under 37 CFR 1.137(b) must be accompanied by the required fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not

appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
PO Box 1450
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By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
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Telephone inquiries concerning the Amendment should be directed to the Examiner. Questions regarding this decision should be directed to the undersigned at (571) 272-3232.


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